

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

27447

**FILE:** B-210406.3

**DATE:** February 15, 1984

**MATTER OF:** Onshore SOG, Inc.--  
request for reconsideration

**DIGEST:**

Protester argues that District of Columbia law on which prior decision dismissing protest is based is unconstitutional, and, therefore, prior decision should be reversed. We affirm prior decision because it is function of courts, not GAO, to declare statutes unconstitutional, and courts have not done so.

Onshore SOG, Inc. (Onshore), requests reconsideration of our decision in Onshore SOG, Inc., B-210406.3, December 22, 1983, 83-1 CPD \_\_\_\_\_, which dismissed Onshore's protest concerning the District of Columbia's (District) leasing of public space under Dupont Circle.

In that decision, we stated that because D.C. Law 1-4 (May 22, 1975) grants the Mayor of the District broad discretion in setting forth procedures for leasing the space, with the caveat that there be citizen participation in the selection process, our review of the procedures is limited to the question of whether there has been citizen participation. Since Onshore did not allege that there was not citizen participation, we dismissed the protest.

Onshore now argues that a June 1983 United States Supreme Court ruling on the constitutionality of "one-house veto power" invalidated the District of Columbia Home Rule Act, which contains such a provision. Since D.C. Law 1-4 was passed under the authority of the Home Rule Act, Onshore argues that it is void and cannot be the basis of a legal decision.

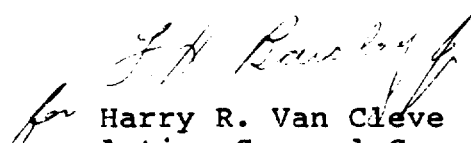
Onshore did not provide a citation to the case, but we assume that it is referring to Immigration and Naturalization Service v. Chadha, \_\_\_ U.S. \_\_\_, 103 S. Ct. 2764 (1983). Chadha held that the legislative veto provision of the Immigration and Nationality Act, 8 U.S.C. § 1254(c)(2) (1982), was unconstitutional because it amounted to lawmaking without the constitutionally mandated requirements of bicameral action and presentment to the President. The

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court found that the legislative veto provision was severable from the remainder of the statute and, therefore, declared only that provision unconstitutional. No court has ruled on the constitutionality of the District of Columbia Home Rule Act or the District Laws passed pursuant to the Act.

We have held that it is not the function of GAO to declare statutes unconstitutional; rather, it is a matter for the courts. Mashburn Electric Company, Inc., et al., B-189471, April 10, 1978, 78-1 CPD 277. We have specifically adopted that position regarding the laws of the District. Northern Virginia Chapter, Associated Builders and Contractors, Inc., et al., B-202510, April 24, 1981, 81-1 CPD 318. We note that Chadha contains no indication of broad retroactive effect being intended, particularly regarding prior actions (laws, regulations, etc.) that were subject to unexercised legislative vetoes.

We affirm our decision.

  
for Harry R. Van Cleave  
Acting General Counsel